

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

PLAINTIFF MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

Plaintiffs Chelsie Nitschke and Cynthia George respectfully requests leave to amend their complaint by filing her First Amended Complaint, attached as Exhibit 1 hereto.

I. PROCEDURAL BACKGROUND

This action commenced on November 12, 2024, with the filing of Plaintiff's Original Complaint [Doc. 1]. Villages At Forest View, LLC, VFV Partners, LLC, Hostettler, Neuhoff & Davis, LLC d/b/a HND Realty LLC filed its Answer on January 6, 2025 [Doc. 16].

Pursuant to the Court's Case Management Order entered January 21, 2025, the proposed to file Motions to Amend is April 14, 2025 [Doc. 18, pp. 4-5, ¶H]. Such deadline has not yet passed.

II.

ARGUMENT AND AUTHORITIES

Under Fed. R. Civ. P. 15(a), leave to amend must be freely given when justice so requires.¹

There is a bias in favor of granting leave to amend.² There must be a substantial reason to deny leave to amend.³ In deciding a motion to amend, the court may consider factors such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party and futility of the amendment.⁴ The policy of the federal rules is to permit liberal amendment to facilitate determination of claims on the merits and to prevent litigation from becoming a technical exercise in the fine points of pleading.⁵

Here, Plaintiffs are timely seeking leave to amend prior to the proposed deadline to do so [Doc. 18, pp. 4-5, ¶H]. The changes to the Complaint are necessary and appropriate to add Bernard L. Weinstein d/b/a Bernard L. Weinstein & Associates, Bernard L. Weinstein & Associates, LLC and Bacar Constructors, Inc., as Defendants. Defendants' disclosures indicate that Bernard L. Weinstein d/b/a Bernard L. Weinstein & Associates and Bernard L. Weinstein & Associates, LLC was the architect that designed the Property and is believed to have responsibility for some of the barriers to access. Bacar Constructors was the builder for the Property. Defendants' expert report, served on March 5, 2025, alleges that both the architect and builder are responsible parties for barriers identified by Plaintiff's expert. No deadlines in the Case Management Order should be affected. This is the first attempt by Plaintiffs to amend their complaint, and there is no undue prejudice to Defendants.

¹ Fed. R. Civ. P. 15(1); *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Moore v. City of Paducah*, 790 F2d 557, 559 (6th Cir. 1986).

² *Stripling v. Jordan Production Co., LLC*, 234 F.3d 863, 872 (5th Cir. 2000); *Quanah Services, Inc. v. Security Bank*, No. 7:20-cv-00027-O, 2020 WL 6119910 at *1 (N.D. Tex. July 1, 2020).

³ *Rawls v. Paradise Artists, Inc.*, No. 3:18-cv-0417, 2018 WL 10229693 at *2 (M.D. Tenn. September 25, 2018) (requiring showing of substantial prejudice to the Defendant); *Stripling*, 234 F.3d at 872.

⁴ *Rawls*, 2018 WL 10229693 at *2; *Poly-America, Inc. v. Serrot International, Inc.*, No. 3:00-cv-1457, 2002 WL 206454 at *1 (N.D. Tex. February 7, 2002); *Dussouy v. Gulf Coast Investment Corporation*, 660 F.2d 594, 598 (5th Cir. 1981).

⁵ *Moore*, 790 F.2d at 559; *Dussouy*, 660 F.2d at 598 (citing cases).

Plaintiffs' counsel has contacted counsel for all Defendants and Defendants are not opposed to the relief sought herein.

This motion is not brought for the purpose of delay, but so that justice may be done.

III.
REQUEST FOR RELIEF

Respectfully, Plaintiffs request leave to file the First Amended Complaint in the form attached as Exhibit 1.

Dated: March 14, 2025.

Respectfully Submitted,

CALHOUN & ASSOCIATES

/s/ Eric G. Calhoun

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF CONFERENCE

I certify I conferred with Danica G. Suedekum, counsel for Defendants. Defendants are not opposed to the relief sought in this Motion.

/s/ Eric G. Calhoun

Eric G. Calhoun

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2025 the foregoing has been electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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